

OCA 1676-88
26 May 1988

MEMORANDUM FOR: [redacted]
[redacted] OGC
FROM: [redacted] Legislation Division
Office of Congressional Affairs
SUBJECT: House Passage of H.R. 3651

1. On 24 March 1988, the House took up and passed H.R. 3651, the "Antiterrorism and Arms Export Amendments Act of 1988." Representatives Berman and Hyde were the prime sponsors.

2. Attached is the text of the bill as passed by the House, together with the House floor debate on passage (Congressional Record, 24 May 1988, pp. H3561-3569). You will note the colloquy on H3567 between Representatives Fascell and Stokes concerning covert arms transfers.

3. To date, there has been no Senate interest in this legislation. We will keep you advised of further developments.

Attachments
as stated

cc: [redacted]

OCA/LEG [redacted] (26 May 1988)

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CONGRESSIONAL RECORD — HOUSE

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and the Nagorno-Karabakh region. The Soviet Union is giving it to Armenia. The Nagorno-Karabakh region is there are many other world disputes in the Soviet Union.

This brief overview of the current Soviet human rights issue shows its complexity and the need for continued American concern. The vital connection between peace and human rights is clear.

Mr. YATRON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FASCELL] that the House suspend the rules and agree to the resolution (H. Res. 455).

The question was taken.

Mr. BROOMFIELD. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

ANTITERRORISM AND ARMS EXPORT AMENDMENTS ACT OF 1988

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3651) to prohibit exports of military equipment to countries supporting international terrorism, and for other purposes as amended.

The Clerk read as follows:

H.R. 3651

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Antiterrorism and Arms Export Amendments Act of 1988".

SEC. 2. PROHIBITION ON ARMS TRANSACTIONS WITH COUNTRIES SUPPORTING TERRORISM.

(a) PROHIBITION.—Section 40 of the Arms Export Control Act (22 U.S.C. 2780) is amended to read as follows:

"SEC. 40. TRANSACTIONS WITH COUNTRIES SUPPORTING ACTS OF INTERNATIONAL TERRORISM.

"(a) PROHIBITED TRANSACTIONS BY THE UNITED STATES GOVERNMENT.—The following transactions by the United States Government are prohibited:

"(1) Exporting or otherwise providing (by sale, lease or loan, grant, or other means), directly or indirectly, any munitions item to a country described in subsection (d) under the authority of this Act, the Foreign Assistance Act of 1961, or any other law (except as provided in subsection (h)). In implementing this paragraph, the United States Government—

"(A) shall suspend delivery to such country of any such item pursuant to any such transaction which has not been completed at the time the Secretary of State makes the determination described in subsection (d); and

"(B) shall terminate any lease or loan to such country of any such item which is in effect at the time the Secretary of State makes that determination.

"(2) Providing credits, guarantees, or other financial assistance under the author-

ity of any law (except as provided in subsection (h)). In implementing this paragraph, the United States Government shall suspend expenditures pursuant to any such assistance obligated before the Secretary of State makes the determination described in subsection (d). The President may authorize expenditures otherwise required to be suspended pursuant to the preceding sentence if the President has determined, and reported to the Congress, that suspension of those expenditures causes undue financial hardship to a supplier, shipper, or similar person and allowing the expenditure will not result in any munitions item being made available for use by such country.

"(3) Consenting under section 3(a) of this Act, under section 505(a) of the Foreign Assistance Act of 1961, under the regulations issued to carry out section 38 of this Act, or under any other law (except as provided in subsection (h)), to any transfer of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall withdraw any such consent which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been transferred to such country.

"(4) Providing any license or other approval under section 38 of this Act for any export or other transfer (including by means of a technical assistance agreement, manufacturing licensing agreement, or co-production agreement) of any munitions item to a country described in subsection (d). In implementing this paragraph, the United States Government shall suspend any such license or other approval which is in effect at the time the Secretary of State makes the determination described in subsection (d), except that this sentence does not apply with respect to any item that has already been exported or otherwise transferred to such country.

"(5) Otherwise facilitating the acquisition of any munitions item by a country described in subsection (d). This paragraph applies with respect to activities undertaken—

"(A) by any department, agency, or other instrumentality of the Government,

"(B) by any officer or employee of the Government (including members of the United States Armed Forces), or

"(C) by any other person at the request or on behalf of the Government.

The Secretary of State may waive the requirements of the second sentence of paragraph (1), the second sentence of paragraph (3), and the second sentence of paragraph (4) to the extent that the Secretary determines, after consultation with the Congress, that unusual and compelling circumstances require that the United States Government not take the actions specified in that sentence.

"(b) PROHIBITED TRANSACTIONS BY UNITED STATES PERSONS.—

"(1) IN GENERAL.—A United States person may not take any of the following actions:

"(A) Exporting any munitions item to any country described in subsection (d).

"(B) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any country described in subsection (d).

"(C) Selling, leasing, loaning, granting, or otherwise providing any munitions item to any recipient which is not the government of or a person in a country described in subsection (d) if the United States person has reason to know that the munitions item will

be transferred to any country described in subsection (d).

"(2) No other action which would facilitate the acquisition, directly or indirectly, of any munitions item by the government of any country described in subsection (d), or any person acting on behalf of that government, if the United States person has reason to know that that action will facilitate the acquisition of that item by such a government or person.

"(2) LIABILITY FOR ACTIONS OF FOREIGN SUBSIDIARIES, ETC.—A United States person violates this subsection if a corporation or other person that is controlled in fact by that United States person (as determined under regulations, which the President shall issue) takes an action described in paragraph (1) outside the United States.

"(3) APPLICABILITY TO ACTIONS OUTSIDE THE UNITED STATES.—Paragraph (1) applies with respect to actions described in that paragraph which are taken either within or outside the United States by a United States person described in subsection (1)(3) (A) or (B). To the extent provided in regulations issued under subsection (1)(3)(D), paragraph (1) applies with respect to actions described in that paragraph which are taken outside the United States by a person designated as a United States person in those regulations.

"(c) TRANSFERS TO GOVERNMENTS AND PERSONS COVERED.—This section applies with respect to—

"(1) the acquisition of munitions items by the government of a country described in subsection (d); and

"(2) the acquisition of Munitions items by any individual, group, or other person within a country described in subsection (d), except to the extent that subparagraph (D) of subsection (b)(1) provides otherwise.

"(d) COUNTRIES COVERED BY PROHIBITION.—The prohibitions contained in this section apply with respect to a country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism, taking into account such factors as whether that government grants sanctuary from prosecution or apprehension to an individual or group which has committed an act of international terrorism.

"(e) PUBLICATION OF DETERMINATIONS.—Each determination of the Secretary of State under subsection (d) shall be published in the Federal Register.

"(f) RESCISSION.—A determination made by the Secretary of State under subsection (d) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

"(1) before the proposed rescission would take effect, a report certifying that—

"(A) there has been a fundamental change in leadership and character of the government of the country concerned;

"(B) that government is not supporting acts of international terrorism; and

"(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

"(2) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

"(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

"(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

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As used in paragraph (1), the term "legislative day" means a day in which the House of Representatives is in session.

(2) **WAIVER.**—The President may waive the prohibition contained in this section with respect to a specific transaction if—

(i) the President determines that the transaction is vital to the national security interests of the United States; and

(2) not less than 15 days prior to the proposed transaction, the President—

(A) consults with the Committee on Foreign Affairs of the House of Representatives of the Senate; and

(B) submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report containing—

(i) the name of any country involved in the proposed transaction, the identity of any recipient of the items to be provided pursuant to the proposed transaction, and the anticipated use of those items;

(ii) a description of the munitions items involved in the proposed transaction (including their market value) and the actual sale price at each step in the transaction (or if the items are transferred by other than sale, the manner in which they will be provided);

(iii) the reasons why the proposed transaction is vital to the national security interests of the United States and the justification for such proposed transaction;

(iv) the date on which the proposed transaction is expected to occur; and

(v) the name of every United States Government department, agency, or other entity involved in the proposed transaction, every foreign government involved in the proposed transaction, and every private party with significant participation in the proposed transaction.

To the extent possible, the information specified in subparagraph (B) of paragraph (2) shall be provided in unclassified form, with any classified information provided in an addendum to the report.

(h) **EXEMPTION FOR TRANSACTIONS SUBJECT TO NATIONAL SECURITY ACT REPORTING REQUIREMENTS.**—The prohibitions contained in this section do not apply with respect to any transaction subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) relating to congressional oversight of intelligence activities).

(i) **RELATION TO OTHER LAWS.**—

(1) **IN GENERAL.**—The provisions of this section shall apply notwithstanding any other provision of law, except as provided in paragraph (2).

(2) **SECTION 614(a) WAIVER AUTHORITY.**—The authority of section 614(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(a)) may be used to permit a transaction under the Foreign Assistance Act of 1961 or the Arms Export Control Act which is otherwise prohibited by this section provided—

(A) there are exceptional circumstances where time is of the essence which require that the provisions of this section be waived without complying with the requirement of subsection (g) of this section that there be a 15-day period of advance consultation and reporting;

(B) the President begins the consultation with the Congress (required by section 614(a)) as soon as the President determines to exercise the authority of section 614(a), but not less than 24 hours before that authority is exercised;

(C) the President submits the report described in subsection (g)(2)(B) of this section not less than 24 hours before that authority is exercised; and

(D) all of the requirements of section 614(a) are otherwise fully met.

(j) **CRIMINAL PENALTY.**—Any person who willfully violates this section shall be fined for each violation not more than \$1,000,000, imprisoned not more than 10 years, or both.

(k) **CIVIL PENALTIES: ENFORCEMENT.**—In the enforcement of this section, the President is authorized to exercise the same powers concerning violations and enforcement which are conferred upon departments, agencies, and officials by sections 11(c), 11(e), 11(g), and 12(a) of the Export Administration Act of 1979 (subject to the same terms and conditions as are applicable to such powers under that Act), except that, notwithstanding section 11(c) of that Act, the civil penalty for each violation of this section may not exceed \$500,000.

(l) **DEFINITIONS.**—As used in this section—

(1) the term "munitions item" means any item enumerated on the United States Munitions list (without regard to whether the item is imported into or exported from the United States);

(2) the term "United States", when used geographically, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States; and

(3) the term "United States person" means—

(A) any citizen or permanent resident alien of the United States;

(B) any sole proprietorship, partnership, company, association, or corporation having its principal place of business within the United States or organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, or any territory or possession of the United States;

(C) any other person with respect to that person's actions while in the United States; and

(D) to the extent provided in regulations issued by the Secretary of State, any person that is not described in subparagraph (A), (B), or (C) but—

(i) is a foreign subsidiary or affiliate of a United States person described in subparagraph (B) and is controlled in fact by that United States person (as determined in accordance with those regulations), or

(ii) is otherwise subject to the jurisdiction of the United States, with respect to that person's actions while outside the United States."

(b) **CONFORMING AMENDMENT.**—Section 3(f) of the Arms Export Control Act (22 U.S.C. 2753(f)) is repealed.

SEC. 2. CONSIDERATIONS IN ISSUANCE OF ARMS EXPORT LICENSES AND IN ARMS SALES.

(a) **EXPORT LICENSES.**—Section 38(a)(2) of the Arms Export Control Act (22 U.S.C. 2778) is amended by inserting "support international terrorism," after "arms race,".

(b) **ARMS SALES.**—Section 36(b)(1)(D) of that Act (22 U.S.C. 2778(b)(1)(D)) is amended—

(1) by redesignating clauses (ii) through (iv) as clauses (iii) through (v), respectively; and

(2) by inserting the following new clause (ii) after clause (i):

"(ii) support international terrorism;"

SEC. 4. EXPORTS TO COUNTRIES SUPPORTING TERRORISM.

Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) is amended to read as follows:

"(j) The Secretary of State shall not issue an export license or permit for the export of any item, technology, or service which has made the United States a party to an act of international terrorism.

(A) The Secretary shall determine whether such factors as whether that government grants sanctuary from prosecution or apprehension to an individual or group which has committed an act of international terrorism.

(B) The export of such goods or technology could make a significant contribution to the military potential of such country, including its military logistics capability, or could enhance the ability of such country to support acts of international terrorism.

(2) The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate at least 30 days before issuing any validated license required by paragraph (1).

(3) Each determination of the Secretary of State under paragraph (1)(A), including each determination in effect on the date of the enactment of the Antiterrorism and Arms Export Amendments Act of 1988, shall be published in the Federal Register.

(4) A determination made by the Secretary of State under paragraph (1)(A) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate—

(A) before the proposed rescission would take effect, a report certifying that—

(i) there has been a fundamental change in leadership and character of the government of the country concerned;

(ii) that government is not supporting acts of international terrorism; and

(iii) that government has provided assurances that it will not support acts of international terrorism in the future; or

(B) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(i) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(ii) the government concerned has provided assurances that it will not support acts of international terrorism in the future.

As used in subparagraph (B), the term "legislative day" means a day on which both Houses of Congress are in session."

SEC. 5. PROHIBITION ON ASSISTANCE TO COUNTRIES SUPPORTING INTERNATIONAL TERRORISM.

Section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) is amended to read as follows:

SEC. 620A. PROHIBITION ON ASSISTANCE TO GOVERNMENTS SUPPORTING INTERNATIONAL TERRORISM.

(a) **PROHIBITION.**—The United States shall not provide any assistance under this Act, the Agricultural Trade Development and Assistance Act of 1954, the Peace Corps Act, or the Export-Import Bank Act to any country if the Secretary of State determines that the government of that country has repeatedly provided support for acts of international terrorism, taking into account such factors as whether that government grants sanctuary from prosecution or apprehension to an individual or group which has committed an act of international terrorism.

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each determination of the Secretary of State under subsection (a), in the determination in effect on the date of enactment of the Antiterrorism and Export Amendments Act of 1982 published in the Federal Register.

(c) **RESCISSION.**—A determination made by the Secretary of State under subsection (a) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate—

(1) before the proposed rescission would take effect, a report certifying that—

(A) there has been a fundamental change in leadership and character of the government of the country concerned;

(B) that government is not supporting acts of international terrorism; and

(C) that government has provided assurances that it will not support acts of international terrorism in the future; or

(2) at least 30 legislative days before the proposed rescission would take effect, a report justifying the rescission and certifying that—

(A) the government concerned has not provided any support for international terrorism during the preceding 6-month period; and

(B) the government concerned has provided assurances that it will not support acts of international terrorism in the future. As used in paragraph (2), the term 'legislative day' means a day on which both Houses of Congress are in session.

(d) **WAIVER.**—Assistance prohibited by subsection (a) may be provided to a country described in that subsection if—

(1) the President determines that national security interests or humanitarian reasons justify a waiver of subsection (a), except that humanitarian reasons may not be used to justify assistance under part II of this Act (including chapter 4, chapter 6, and chapter 8), or the Export-Import Bank Act; and

(2) at least 15 days before the waiver takes effect, the President consults with the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate regarding the proposed waiver and submits a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate containing—

(A) the name of the recipient country;

(B) a description of the national security interests or humanitarian reasons which require the waiver;

(C) the type and amount of and the justification for the assistance to be provided pursuant to the waiver; and

(D) the period of time during which such waiver will be effective.

The waiver authority granted in this subsection may not be used to provide any assistance under the Foreign Assistance Act of 1961 which is also prohibited by section 40 of the Arms Export Control Act."

SEC. 4. DESIGNATION OF ITEMS ON THE MUNITIONS LIST.

Section 38 of the Arms Export Control Act (22 U.S.C. 2278) is amended by adding at the end the following:

"(h) The designation by the President (or by an official to whom the President's functions under subsection (a) have been duly delegated), in regulations issued under this section, of items as defense articles or defense services for purposes of this section shall be final and conclusive for purposes of this section and section 40 and shall not be subject to judicial review."

...the end of paragraph (9) and inserting in lieu thereof a sentence:—

(3) by inserting after paragraph (9) the following:

"(10) a listing of the consents to third-party transfers of defense articles or defense services which were granted, during the quarter for which such report is submitted, for purposes of section 3(a)(2) of this Act, the regulations issued under section 38 of this Act, or section 505(a)(1)(B) of the Foreign Assistance Act of 1961, if the value (in terms of original acquisition cost) of the defense articles or defense services to be transferred is \$1,000,000 or more; and

"(11) a listing of all munitions items (as defined in section 40(d)(1)) which were sold, leased, or otherwise transferred by the Department of Defense to any other department, agency, or other entity of the United States Government during the quarter for which such report is submitted (including the name of the recipient Government entity and a discussion of what that entity will do with those munitions items) if—

"(A) the value of the munitions items was \$250,000 or more; or

"(B) the value of all munitions items transferred to that Government department, agency, or other entity during that quarter was \$250,000 or more;

excluding munitions items transferred (i) for disposition or use solely within the United States, or (ii) for use in connection with intelligence activities subject to reporting requirements under title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) relating to congressional oversight of intelligence activities."

(b) **CLASSIFICATION OF REPORTS.**—That section is amended in the parenthetical clause in the text preceding paragraph (1) by inserting ", and any information provided under paragraph (11) of this subsection may also be provided in a classified addendum" after "(b)(1) of this section".

SEC. 5. SPECIAL AUTHORITIES.

The second sentence of section 614(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2364(c)) is amended to read as follows: "The President shall fully inform the chairman and ranking minority member of the Committee on Foreign Affairs of the House of Representatives and the chairman and ranking minority member of the Committee on Foreign Relations of the Senate of each use of funds under this subsection prior to the use of such funds."

SEC. 6. HOSTAGE ACT.

Section 2001 of the Revised Statutes of the United States (22 U.S.C. 1732) is amended by inserting "and not otherwise prohibited by law" after "acts of war".

The SPEAKER pro tempore. Is a second demanded?

Mr. BROOMFIELD. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FASCELL] will be recognized for 20 minutes and the gentleman from Michigan [Mr.

...minutes.

The Chair recognizes the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FASCELL asked and was given permission to revise and extend his remarks.)

Mr. FASCELL. Mr. Speaker, I rise in support of H.R. 3651, as amended, which prohibits the exports of military equipment to countries supporting international terrorism and for other purposes.

Mr. Speaker, over the last few years this body has considered and approved many different provisions which strengthened our policy to combat international terrorism. The Foreign Airport Security Act of 1985 and the Omnibus Diplomatic Security and Antiterrorism Act of 1986 are but a few examples, and were bipartisan endeavors that have proved indispensable for the implementation of an effective antiterrorism policy.

One of the prohibitions the Congress passed in 1986 and the President signed into law is a ban on the export of items on the U.S. munitions list to any country which the Secretary of State determines repeatedly provides support for international terrorism. That prohibition, authored by Mr. BERMAN and Mr. HYDE, is now section 40 of the Arms Export Control Act. There are currently six countries on the Secretary of State's terrorist list. They are Iran, Syria, Libya, Cuba, South Yemen, and North Korea.

There was some debate during the investigations into the Iran arms transactions over the meaning and intent of section 40 and of other laws which bear upon arms exports to such terrorist countries. The Committee on Foreign Affairs examined these laws and found it necessary to revise and restate some of the antiterrorism provisions currently in law. The Committee consolidated some provisions and reporting requirements and strengthened other prohibitions which are intended to clarify and strengthen the effectiveness of the U.S. Government antiterrorism policy, and make such a policy consistent with the arms export control policies of our Government.

Mr. Speaker, my distinguished colleagues on the committee, Mr. BERMAN and Mr. HYDE, have accomplished that task with a strong bipartisan bill, H.R. 3651. I understand that the administration has not objected to this important legislation. I would like to commend my colleagues for their efforts and tireless work to achieve a measure which enjoys such strong bipartisan support. This legislation has 65 cosponsors from both sides of the aisle. Three subcommittees of the Committee on Foreign Affairs held a hearing on this bill on March 17. We heard from representatives of the executive branch—State, Commerce, Defense, the CIA—and the private sector.

The primary purpose of the bill is to strengthen and clarify the country's prohibition on the export of military arms and equipment and the provision of other types of U.S. assistance to countries which have been placed on the Secretary of State's "terrorist list." It also required more detailed reporting by the executive branch about exports of arms.

H.R. 3651 is a constructive restatement of existing law. It closes potential loopholes and revises certain provisions of law to ensure that uniform standards governing arms exports to terrorist countries are present in the United States Code. H.R. 3651 also provides stiff criminal and civil penalties for those who violate the prohibitions on arms exports to terrorist states similar to those already contained in the export administration act.

Mr. Speaker, at the committee markup concern was raised about whether the President would be inhibited from using the waiver authority under section 614(a) of the Foreign Assistance Act of 1961 in connection with terrorist countries. Subsequent to the markup, Mr. BERMAN and Mr. HYDE agreed to a conditional right to use the section 614(a) waiver authority under exceptional circumstances where time is of the essence and the Committee on Foreign Affairs is fully consulted and reported to prior to the use of the authority. That agreed language is incorporated in the text that we are considering today. This is the only change in the text of the bill as reported by the committee. A more detailed description of the provision is contained in the section-by-section analysis in the report accompanying H.R. 3651.

Underpinning H.R. 3651 has been a remarkable amount of consultation and collaboration between majority and minority staffers, between Members on both sides of the aisle, between the Committee on Foreign Affairs and the Permanent Select Committee on Intelligence, and between Congress and the executive branch and the private sector. I highly commend Mr. BERMAN and Mr. HYDE for their tireless work on this outstanding piece of legislation.

Mr. Speaker, I strongly support the legislation before the House and urge my colleagues to approve it with an overwhelming vote. Only terrorist governments and international terrorists will mourn the passage of H.R. 3651.

Mr. BROOMFIELD. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BROOMFIELD asked and was given permission to revise and extend his remarks.)

Mr. BROOMFIELD. Mr. Speaker, I wish to express my support for H.R. 3651. This bill could improve the law used to control the export of arms and other sensitive technology to countries which support international terrorism.

I commend the primary sponsors, Mr. HYDE and Mr. BERMAN, for their work on this measure. This bill is the result of numerous discussions within Congress and with the executive branch.

H.R. 3651 is a constructive response to the Iran-Contra affair. Rather than making unrealistic demands on the administration, it attempts to construct a careful framework of restrictions, notification and consultation for transactions involving terrorist states.

The bill would impose new reporting requirements. But these have been carefully crafted to ensure that they will be useful and not unduly burdensome.

Among other things, H.R. 3651 addresses the subject of:

Prohibited actions by U.S. officials and other persons;

Reporting of all arms transfers to terrorist countries under either the arms export control act or as intelligence activities;

Special reporting of interagency arms transfers or transfers by third countries; and

Presidential waiver authority. The Office of Management and Budget (OMB) has issued a statement of administration policy which indicates that the administration does not oppose H.R. 3651. The administration statement also points to the committee report language which states that the bill is not intended to impair the President's constitutional authority over foreign relations.

Mr. Speaker, I wish again to commend the sponsors of this measure.

Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. LAGOMARSINO].

(Mr. LAGOMARSINO asked and was given permission to revise and extend his remarks.)

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 3651, the Antiterrorism and Arms Export Amendments Act of 1988. This legislation, which I have cosponsored, will reaffirm, strengthen, and clarify U.S. policy on exports of military weapons to terrorist states.

This legislation indicates that we have learned lessons from the ill-fated Iran arms sale, a deal to which I was opposed. These new amendments reinforce the prohibition on the export of arms to States which support international terrorism, like Iran. These amendments also clarify the obligation of the executive branch to inform Congress of both overt and covert exports of military weapons to foreign governments.

Closing the current law's loopholes, strengthening and clarifying its language and adopting uniform standards is an important way to increase the effectiveness of our antiterrorism campaign. We should not be providing any sort of military capabilities to terrorist nations and this legislation reinforces that stand. As we did in the foreign affairs committee, I urge my colleagues

the House to support and pass this positive legislation.

Mr. BROOMFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], the sponsor of this bill, to control the time on our side.

Mr. FASCELL. Mr. Speaker, I ask unanimous consent to transfer the management of this measure on our side to my distinguished colleague, the gentleman from California [Mr. BERMAN].

The Speaker pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, at the outset I would like to commend the distinguished chairman of the Committee on Foreign Affairs, Mr. FASCELL, the distinguished gentleman from Indiana [Mr. HAMILTON] and the distinguished gentleman from Illinois [Mr. HYDE] for their leadership on this bill. Their support has been instrumental in highlighting the importance of this legislation.

Chairman FASCELL's support for antiterrorism legislation over the years has served as a helpful example in the drafting of this bill. His conviction that these laws need improvement was a helpful force in accomplishing what we have. I also want to pay particular tribute to the gentleman from Illinois. Mr. HYDE's sincerity of purpose and his constructive contributions to H.R. 3651 are the soundest rebuttals to the cynics who profess that bipartisan legislation is no longer doable on Capitol Hill.

Mr. Speaker, an unfortunate state of affairs has brought this legislation before the House today. We live in a world where sovereign nations promulgate terrorism and support groups who likewise use terror against non-combatants. Against such an enemy, there is all too little even the most powerful country can do to strike at such a nation's ability to conduct terrorism.

The U.S. Government has traditionally seized on one specific mechanism, and that is to deny terrorist countries weapons with which to perpetrate terrorist acts and to deny dual-use goods which facilitate such acts of terror. This is altogether appropriate.

Recent events have led me to conclude that the laws were not clear enough or the penalties not harsh enough or the consequences of bypassing their intent not frightening enough, with the result that weapons were provided to a terrorist state.

While it is theoretically possible that an occasion will occur where prohibition of arms to a terrorist state will be the appropriate policy, it would seem that that eventually should be

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...to make...
...by the...
...the potential consequences...
...these procedures...
...to rewrite the...
...and antiterrorism laws in an...
...and coherent fashion.

Mr. Speaker, two years ago Mr. Hyde and I authored an amendment to the Arms Export Control Act. It read very simply:

[Items on the United States Munitions List may not be exported to any country which the Secretary of State has determined * * * has repeatedly provided support for acts of international terrorism.

The President may waive this prohibition. But he must determine that the export is important to the national interests of the United States. And he must notify Congress. Mr. Hyde and I introduced this amendment as a logical extension of the administration's antiterrorism policy, particularly as it was reflected in Operation Staunch against Iran.

The Berman-Hyde amendment became the law of this land, with broad bipartisan support, on August 26, 1986. Two months later 500 TOW missiles were shipped into Iran without notification to Congress. Ensuing months produced conflicting interpretations of our amendment and of other prohibitions and reporting requirements in the United States Code.

The debate that took place during the investigations into the Iran arms transactions regarding the meaning and intent of arms export and antiterrorism laws required a reexamination of these laws, which include not only section 40 of the Arms Export Control Act but other provisions in three statutes which attempt to regulate exports of arms and certain goods and technology to terrorist countries.

Over the years Federal law has absorbed overlapping standards that can lead to confusion and misinterpretation. There is no single standard in the law for:

First, determining whether a country supports international terrorism;

Second, identifying which U.S. official should make that determination;

Third, identifying which arms are subject to restrictions;

Fourth, identifying the criteria that empower the President to waive statutory restrictions; and

Fifth, adequately informing Congress of arms exports, including covert exports.

The inconsistent provisions do not make good law either for the U.S. Government, witness the Iran arms transactions, or for private American citizens who look to the law for guidance.

The Antiterrorism and Arms Export Amendments Act of 1988 reaffirms, strengthens, and clarifies this Nation's prohibition on exports of military weapons and equipment to countries which have been designated by the Secretary of State as supporters of international terrorism. It imposes

criminal sanctions on the export of the... H.R. 3651 requires... and periodic reporting by the executive of arms exports.

H.R. 3651 is largely a restatement of existing law. Its intent is to close potential loopholes and revise certain existing provisions to ensure that uniform standards are present in the United States Code. The bill makes no attempt to reform the personnel or structure of the National Security Council or the State, Commerce or Defense Departments. Nor does it seek to change the manner in which arms exports are approved by the U.S. Government or to impose blanket sanctions on terrorist states. The bill does not impair the President's discretionary authority. In fact, in some cases the bill broadens the President's discretion. But the bill does hold the President to a reasonable standard of accountability to Congress in the exercise of that authority.

Since H.R. 3651 was introduced on November 18, 1987, with the primary cosponsorship of Chairman FASCELL, Mr. HAMILTON and Mr. HYDE, more than 60 Members of Congress from both parties have joined in sponsoring this important bipartisan legislation. A tremendous amount of work has gone into examining the bill since it was introduced. There has been close consultation between majority and minority staffers. Numerous meetings have been held with the staff of the House Permanent Select Committee on Intelligence, with officials from the State, Defense and Commerce Departments and from the Central Intelligence Agency, and with representatives from the private sector.

Mr. Hyde and I worked closely during this period to incorporate a large number of the recommendations that were made during the review process. I wish to stress that many of the changes reflected in the bill as amended have been incorporated at the request of the administration following our careful consideration. We have gone to considerable lengths to accommodate the administration's legitimate concerns and, in some cases, provided the executive with additional authority.

H.R. 3651 amends the Arms Export Control Act, the Foreign Assistance Act of 1961, the Export Administration Act of 1979 and the Hostage Act of 1968. Its major provisions amend the following sections of these statutes:

Section 40 of the Arms Export Control Act, which prohibits exports of arms to terrorist states, is significantly reinforced. Prohibited transactions are listed in detail, both with respect to U.S. Government activities and private transactions. The President could waive the prohibitions for specific transactions, but only with prior, detailed reporting to Congress, on a classified basis if necessary. Also, the President may rescind the Secretary

of State's...
...national terrorism...
...with...
...President's...
...effective immediately...
...fundamental change in the...
...and character of a...
...and appropriate assurances have been delivered, or 30 legislative working days after the President has given Congress a report confirming that the terrorist government has not provided any support for international terrorism during the preceding 6-month period and that appropriate assurances have been delivered by that government. The standard for identifying a government which supports international terrorism is clarified. The requirements for a Presidential rescission and for identifying a terrorist government are repeated in the amendments to the antiterrorism provisions of the Export Administration Act (section 6(j)) and the Foreign Assistance Act of 1961 (section 620A).

A clear line is drawn in amended section 40 to prohibit overt transfers to terrorist states, unless the President exercises his waiver authority, while regulating intelligence transfers which are subject to the reporting requirements of the National Security Act of 1947. The amended section 40 also imposes criminal penalties on public officials and private parties who violate the prohibition.

Section 3(f) of the Arms Export Control Act is repealed. This is the original antiterrorism provision of the Arms Export Control Act, and it is superseded by the revised section 40 prohibition.

Section 38(a)(2) of the Arms Export Control Act is amended to further obligate the Director of the Arms Control and Disarmament Agency, in connection with the issuance of export licenses, to take into account whether the export of a munitions list item will support international terrorism.

Section 36(b)(1)(D) of the Arms Export Control Act is amended to further obligate the director of the Arms Control and Disarmament Agency, in connection with a sale of munitions items by the Government, to evaluate how, if at all, the proposed sale would support international terrorism.

Section 6(j) of the Export Administration Act, which regulates the export of goods and technology of significant military or of "terrorist" value to terrorist states, is amended first, to remove the current \$1,000,000 annual threshold amount under which the executive currently does not have to report to Congress exports of such goods and technology to terrorist states, and second, to require validated licenses for all such exports to terrorist states and 30-day prior notification to Congress of the proposed issuance of a validated license. Section 6(j) also is amended to conform the rescission authority under that section with the

reasonable authority available under new section 620A of the Foreign Assistance Act of 1961.

Section 6(J)(1)(B) of the Export Administration Act of 1979 is amended to require that the Secretary of State's second determination be one regarding which the export of the goods and technology could make a significant contribution to the military potential of a terrorist country or could enhance the ability of such country to support acts of international terrorism. I want to emphasize that the reference on page 13 of House Report No. 100-623 to this determination applying to "a wide range of goods and technology" must be read in conjunction with the standard of reasonableness which is explained in the same sentence. That standard typically should be applied to target certain types of goods and technology which the Commerce Department reasonably determines could make a significant contribution to the military potential of a terrorist country or could enhance the ability of such country to support acts of international terrorism. I do not interpret it as meaning that a wide, indiscriminate net should be thrown out to capture every conceivable good or technology.

Section 620A of the Foreign Assistance Act of 1961, the "antiterrorism" section of that act, is amended to conform it with other changes in the law, particularly the revision of section 40 of the Arms Export Control Act. There is a clarification that the President cannot use humanitarian reasons to justify a waiver of the antiterrorism prohibition for the purpose of providing any security assistance under part II of the Foreign Assistance Act of 1961 or by the Export-Import Bank.

Section 36 of the Arms Export Control Act, which requires certain reports to Congress about commercial and governmental military exports, is amended to add:

First, quarterly reports listing all Presidential consents to transfers of munitions list items, exceeding \$1 million in value, from a recipient country to a third country under the authority of sections 3(a) or 38 of the Arms Export Control Act or section 505 of the Foreign Assistance Act of 1961;

Second, quarterly reports—classified if necessary—of interagency transfers of munitions list items which will not ultimately be disposed of within the United States but excluding from the report those munitions list items which are used solely in connection with intelligence activities and are subject to other reporting requirements under the National Security Act.

Section 614(c) of the Foreign Assistance Act of 1961 is amended to designate the recipients of the Presidential notification under that section to the chairman and ranking member of the Committee on Foreign Affairs of the House of Representatives.

tives rather than the Speaker, and to require prior notice of the use of the authority under that section.

The Hostage Act of 1868 is amended to clarify that the President's authority to take action to release hostages cannot be carried out in a manner which would otherwise be prohibited by law.

Mr. Speaker, the Antiterrorism and Arms Export Amendments Act of 1988 is a constructive, bipartisan effort to clarify and restate the laws which prohibit arms exports to terrorist states and to strengthen other reporting requirements about arms exports. I strongly urge my colleagues to support this bill.

The distinguished chairman of the Committee on Foreign Affairs noted in his remarks that subsequent to the committee markup of H.R. 3651, Mr. Hyde and I agreed upon amending language which would entitle the President to use certain authority under section 614(a) of the Foreign Assistance Act of 1961 in connection with a terrorist country. That agreed language is incorporated in the bill on the floor and is described on page 10 of the committee report, House Report No. 100-623.

Mr. Speaker, as part of my presentation, I am including a list of about 18 people requesting an opportunity to be cosponsors, in addition to the 50 or more cosponsors already on this bill, as follows:

Mr. Blaz, Mr. DeFazio, Mrs. Collins, Ms. Pelosi, Mr. Weiss, Mr. Lagomarsino, Mr. Grant, Mr. Feighan, Mr. Richardson, Mr. Konnyu, Mr. Jontz, Mr. Boehlert, Ms. Kaptur, Mrs. Boxer, Mr. Fazio, Mr. Moody, Mr. Lipinski, Mr. Cardin, Mr. Andrews, Mr. Barnard, Mr. Visclosky, Mr. Garcia, Mr. Horton, Mr. Chapman, Mr. Williams, and Mrs. Johnson.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am very pleased to join my colleague, the gentleman from California, in support of H.R. 3651. He has provided effective leadership in this difficult and important area, and I must say has risen above partisanship to craft this legislation. It was a great pleasure to work with the gentleman from California [Mr. BERMAN] and his excellent and expert staff.

Mr. Speaker, this legislation deals with a very serious problem, and at the same time offers a measured response to some of the policy problems identified during the Iran-Contra hearings in which I was privileged to participate.

As serious terrorist acts proliferate and the global community struggles to respond effectively, it is now more important than ever that the United States have a consistent, clearly stated terrorist policy. This legislation is designed to help fill this need.

H.R. 3651 represents a significant contribution to the statutory underpinning of our antiterrorist policy. It is a bill that will be a U.S. anti-terrorist bill throughout

our main statutes: The Arms Export Control Act; the Export Administration Act; the Foreign Assistance Act; and the Hostage Act.

In many cases, these statutes apply standards, definitions, waivers, or determinations which are inconsistent with one another. In response to this problem, the gentleman from California and I have attempted to fashion a bill which would bring together in one single statute all of the principal, statutory elements of our Nation's antiterrorism policy. Section 40 of the Arms Export Control Act now represents the uniform standard needed to effectively administer this policy.

At the heart of H.R. 3651 is its prohibition on virtually all arms transactions with a country which supports terrorism. H.R. 3651 amends section 40 of the Arms Export Control Act by strengthening its existing prohibitions on arms transfers to nations supporting terrorism, tightening up its current waiver authorities, drawing a clear line between overt and covert arms transactions, and imposing criminal and civil penalties for violators of these provisions.

H.R. 3651 also requires a validated license for the export of goods and technology which could make a significant contribution to the military potential of a terrorist country or could enhance the ability of that same country to support acts of international terrorism. This will help prevent items capable of being used in support of a terrorist act from falling into a terrorist country's hands.

H.R. 3651 also specifically prohibits any U.S. foreign assistance to countries supporting international terrorism.

During the course of consideration of H.R. 3651, committee staff has met extensively with representatives of all affected executive branch agencies and the private sector. Many changes were subsequently made in H.R. 3651 in response to concerns voiced during these meetings. While the administration may not be 100 percent happy with this bill, they should nonetheless be 95 percent happy with it.

H.R. 3651 will allow more effective administration of our antiterrorism policy, knowing that the legislative guideposts are clear and that a strong antiterrorist policy will enjoy the support of both the Congress and the American people.

Once again I would like to thank my colleague from California for his constructive and bipartisan approach to fashioning this bill. We have a good product which, while not totally satisfying either of us, is nonetheless a bipartisan effort we can be proud of.

Finally, I would like to thank the staff on both sides of the aisle for their work on this issue. Special thanks go to minority staffers, Bill Ingless and Dan Fink of the House Foreign Affairs Committee, and Steve

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Mr. FASCELL. Mr. Speaker, I am happy to yield to the gentleman from Florida [Mr. HYDE], the chairman of the Committee on Foreign Affairs.

Mr. FASCELL. Mr. Speaker, I thank the gentleman from Illinois for yielding, and I just want to express my appreciation to him because I know that in this kind of esoteric, arcane area of legislation one has to really rise far and above and beyond the call of duty in order to do what he and the gentleman from California [Mr. BERMAN] have done in a bipartisan sense to wend their way through all this statutory maze and try to do something to improve the law, standardize it, and I think it is an outstanding job and I want the record to reflect that as chairman of the Committee on Foreign Affairs I extend my deep appreciation to the gentleman from Illinois [Mr. HYDE] who is an outstanding lawyer, and I also know that he had a lot of other things on his mind besides this legislation.

Mr. HYDE. Mr. Speaker, reclaiming my time, I do thank the gentleman from Florida [Mr. FASCELL] very much for his kind remarks.

Mr. Speaker, I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, I yield such time as he may consume to the gentleman from Florida [Mr. FASCELL].

Mr. FASCELL. Mr. Speaker, I thank the gentleman from California for yielding time to me.

At this point, I would ask the gentleman from Ohio [Mr. STOKES], the distinguished chairman of the Intelligence Committee, to engage in a colloquy concerning that provision of the bill which relates to intelligence activities.

I want to confirm that the new section 40(h) of the Arms Export Control Act proposed in this bill draws a clear line between overt and covert transactions which involve the transfer of munitions items to a country on the Secretary of State's terrorist list. In order to implement an overt transaction, the President would have to exercise his waiver authority under new section 40(g) of the Arms Export Control Act. This may include a transaction for which the President chooses to submit a classified report. In order to implement a covert transaction, the President would be required to use intelligence authorities and comply with the reporting requirements to Congress set forth in title V of the National Security Act. Either way, Congress must be informed of transfers of munitions list items to a country on the Secretary of State's terrorist list.

My concern, with respect to intelligence-related transfers of munitions list items to any foreign country—not

just a country on the Secretary of State's terrorist list.

Is it possible that intelligence-related transfers to a country on the munitions list can be made for any purpose other than for intelligence purposes in foreign countries; namely, those significant anticipated intelligence activities described as "covert actions" in H.R. 3822 and which require, even under current law, a Presidential finding reportable to the Intelligence Committees before the covert action is implemented? I presume such other purpose would be a transfer of munitions list items solely for intelligence collection purposes. Would such transfer be reported to the Intelligence Committees prior to the transfer if it was part of a significant anticipated intelligence activity? Would it possibly be reported some time after the transfer has taken place in those cases where the intelligence activity does not rise to the level of a significant anticipated intelligence activity?

Mr. STOKES. Mr. Speaker, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman from Ohio.

Mr. STOKES. Mr. Speaker, my response would be as follows. All covert actions, as that term is described in H.R. 3822, require a finding. All findings must be reported to the Intelligence Committees prior to activities initiated under such findings. While there is dispute about the circumstances under which prior notice may be deferred by the President, there is agreement that these circumstances will be rare. In any event, decisions of this kind are governed by the provisions of the National Security Act, whether or not it is amended by the Congress.

However, with respect to other intelligence activities, a different regime applies. Intelligence activities which reach the level of significance to be termed "significant anticipated intelligence activities" must be reported, like covert actions, prior to their initiation. Therefore, transfers of items on the munitions list in connection with such activities will be disclosed to the committees before they happen.

Other intelligence activities must, under the law, be reported to the Intelligence Committees "fully and currently," but not necessarily prior to their initiation. The committees therefore will not necessarily know beforehand of transfers of munitions list items in connection with such other intelligence activities. However, the committees do pay particular attention to the provision of lethal equipment to groups or governments and regularly review them. This is not to say that every transfer of a weapon to an individual is examined.

There is a range of intelligence collection activities which falls into this latter category. For instance, the provision of some personal weapon or piece of surveillance equipment to an intelligence agent usually would not

require a report to the Intelligence Committees.

Further, it is true that some individuals with intelligence services must do some collection of intelligence information. They may have terrorist connections. In many cases, these relationships need not be reported in advance to the Intelligence Committees.

These examples, however, should be distinguished from an intelligence transfer of munitions list items, for whatever purpose, to a government designated as a terrorist government or to any individual or group acting on behalf of a terrorist government. Such transfers would require prior notification to the Intelligence Committees as significant anticipated intelligence activities. Further, transfers to other individuals or groups could also be significant anticipated activities because of their policy implications, risk, cost or other consideration.

Mr. FASCELL. I thank the gentleman. Let me pose an additional question. Is the Intelligence Committee satisfied that it has in place or will, with the passage of H.R. 3822, have in place sufficient procedures and reporting requirements to ensure that it is informed of all transfers of items on the munitions list which require the attention of the committee?

Mr. STOKES. If the gentleman will yield further, there are some changes in H.R. 3822 which will increase reporting of transfers of items on the munitions list to the Intelligence Committees and formalize the reporting of the use of nonappropriated funds. In addition, the Intelligence Committee does have other procedures or reporting requirements which it has imposed from time to time to ensure that transfers by the U.S. Government, or even transfers within the U.S. Government, of items on the munitions list, will be reported to the committee. At present, it is my opinion that these procedures and requirements, taken together, are adequate. For example, transfers of items on the munitions list such as those which took place during the Iran/Contra affair, would be required to be reported under current procedures and requirements.

Mr. FASCELL. Mr. Speaker, I thank the gentleman from Ohio very much.

Mr. BERMAN. Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at this time I yield to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Speaker, I thank the gentleman from Illinois for yielding.

At the committee markup, my distinguished colleague from Illinois proposed and I agreed to continue examining the prohibition on using the section 614(A) waiver authority of the Foreign Assistance Act of 1961. We have studied this very carefully since

section 614(A) waiver authority should be available to the President under specific conditions set forth in amending language which is incorporated in the text of the bill being voted on today.

I would ask the distinguished gentleman from Illinois to describe the circumstance under which the section 614(A) waiver authority can be exercised pursuant to new section 40(i) of the Arms Export Control Act.

Mr. HYDE. Mr. Speaker, I would respond as follows. New section 40(i) permits the Presidents to use the section 614(A) waiver authority only in exceptional circumstances where time is of the essence.

Specifically, the President should use the section 614(A) waiver authority only when he needs to act under that authority in less than 15 days.

New section 40(i) further provides that the President begin consultation with the Congress as soon as he determines to exercise the section 614(A) authority, but not less than 24 hours before that authority is exercised.

Reflecting our need to be kept informed about munitions transfers to terrorist countries, new section 40(i) also requires a detailed report prior to the exercise of the waiver authority.

I would stress, too, that the President should have a very strong justification for exercising the section 614(A) waiver authority in any case involving transfers to a terrorist country.

□ 1700

Mr. BERMAN. I thank the gentleman. I, too, wish to emphasize that the amendment addresses an extraordinary situation, where the President wishes to provide munitions items to a terrorist country on very short notice; that is, in less than 15 days. The list of such countries is small; the situations which would require such extraordinary action are almost too hypothetical to envisage; and the risk we run in exporting these items to terrorist states—that they might fall into the hands of supporters of terrorists, or terrorists themselves—that the President should use the section 614(A) waiver authority only as a last resort following consultation with the Congress and submission of a report.

I want to emphasize that the consultation requirement does not mean that the President should wait until 24 hours before he exercises the section 614(A) authority to consult with Congress. It means that the consultations begin within the 15-day period at the time the President determines he is going to exercise the authority and begins formulating plans to actually do so.

Mr. HYDE. Will the gentleman yield at that point for a short colloquy on whether purely diplomatic activities are covered by the provisions of this bill?

section 40(A) of the bill is to activities of the U.S. Government. Paragraph (5) of that subsection prohibits "otherwise facilitating the acquisition" of arms by terrorist countries.

I wish to point out that the committee report clarifies the applicability of this section to diplomatic activities undertaken at the request or direction of the President. As the report states:

This provision is not intended to circumscribe the President's constitutional powers to articulate U.S. foreign policy, or to communicate with any foreign country concerning arms transfers that the foreign country intends to make. It is not intended as a limitation on the President's authority to discuss such matters with foreign countries, but rather to deal with specific and concrete actions to assist in a foreign government's plans.

Now, section 40(B) of the bill deals with other actions by U.S. persons. Paragraph (b)(1)(D) of that section contains a parallel provision of facilitating the acquisition of arms by terrorist governments.

Is it the gentleman's understanding that the same principle of interpretation contained in the committee report applies to subsection 40(B)(1)(D) as to subsection 40(A)(5)?

Mr. BERMAN. Yes. The actions of U.S. Government officials and other persons "at the request or on behalf of the government" were intended to be primarily covered by subsection 40(A).

To the extent that U.S. officials or other persons expressly acting at the request or direction of the President would fall within the purview of subsection 40(B), they would indeed be subject to the same principles cited in the committee report.

On the other hand, arms dealers or other persons who voluntarily become part of a chain of events leading to the acquisition of arms by a terrorist country would be covered by the paragraph 40(B)(1)(D) prohibition. The privilege for actions of U.S. officials and other persons acting at the request or direction of the President does not apply if the individual goes beyond the sphere of diplomatic activities and becomes part of the chain of events leading to acquisition of arms by a terrorist state.

Mr. HYDE. Mr. Speaker, I thank the gentleman. That certainly encompasses my understanding as well.

I reserve the balance of my time.

Mr. BERMAN. Mr. Speaker, only two more points. One is to express a very heartfelt sense of appreciation to staff. They have done the real hard research and drafting that has made this kind of, I think, significant and encompassing piece of legislation possible. David Scheffer of the Committee on Foreign Affairs committee staff and Lise Hartman from my own staff, my foreign affairs consultant, have spent, I think, hundreds of hours in putting this legislation together and in negotiating the different provisions that raised concerns in different areas of the Government and in the private sector as well.

Mr. Verstandig have provided great backup from the committee to help us in guiding our way, and I also have to concur with the gentleman from Illinois [Mr. HYDE], the minority staff has demonstrated its wisdom and objectivity in a fashion that some of the more partisan Members of the House like yours truly would never have thought possible before he undertook this process, and I am very grateful to all of them.

I do want to add, given the earlier conversations with respect to diplomatic activities, that I want to emphasize that it is our intent, and I think the gentleman from Illinois as well as my own, and I think it is a feeling shared by a vast majority of the Members of Congress, that we wish to discourage a President from conducting diplomacy in a fashion that would encourage another government to facilitate the acquisition of munitions items by a terrorist country. The clear intent of this legislation is to discourage arms transfers to terrorist countries, and it is our belief that intent should be reflected in the President's diplomatic activities.

With that comment, I once again pay my respects to the gentleman from Illinois, my colleague, and the chairman from the committee and others who have helped.

Mr. Speaker, I yield back the balance of my time.

Mr. HYDE. Mr. Speaker, I also want to thank the gentleman from California [Mr. BERMAN] for his kind words and herculean work, both staff and himself and our staff, too.

Let me just say that this is a useful statute, a good statute. I do not think we can by statute circumscribe the President's constitutional powers in foreign policy, and I do not think we have. I believe this is something that I think will be helpful in the very treacherous field of, antiterrorism ahead, both to the Executive and to the Congress.

Mr. Speaker, I yield back the balance of my time.

Mr. LAGOMARSINO. Mr. Speaker, I rise in support of H.R. 3651, the Antiterrorism and Arms Export Amendments Act of 1988. This legislation, which I have cosponsored, will reaffirm, strengthen, and clarify U.S. policy on exports of military weapons to terrorist states.

This legislation indicates that we have learned lessons from the ill-fated Iran arms sale, a deal to which I was opposed. These new amendments reinforce the prohibition on the export of arms to states which support international terrorism, like Iran. These amendments also clarify the obligation of the executive branch to inform Congress of both overt and covert exports of military weapons to foreign governments.

Closing the current law's loopholes, strengthening and clarifying its language and adopting uniform standards is an important way to increase the effectiveness of our antiterrorism campaign. We should not be prodded by the sort of military capabilities to terrorism.

